



GMS Flash Alert

Immigration Edition

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United States - Supreme Court Allows Implementation of New "Public Charge" Rule

On January 27, 2020, the Supreme Court of the United States ruled in favor of lifting the nationwide injunction preventing the Department of Homeland Security (DHS) from implementing the "public charge" final rule first introduced on August 14, 2019. The only U.S. jurisdiction not impacted by the ruling is Illinois, which currently has a separate statewide injunction in effect.¹

The final rule expands the definition of public charge and the U.S. government's discretion in adjudicating adjustment of status (i.e., permanent residence) and certain nonimmigrant (i.e., temporary) visa applications relating to persons deemed likely to rely on public benefits.²

WHY THIS MATTERS

The final rule provides U.S. immigration officers more latitude in evaluating whether an applicant for immigration benefits is now, or is likely to become in the future, a public charge. The implementation of this rule will increase the evidentiary burden on immigrants and potentially cause significant processing delays.

The DHS is expected to soon release updated versions of many immigration application forms to require information that would assist officers in determining admissibility to the U.S. based on the public charge ground.

Context

Under the *Immigration and Nationality Act*, individuals seeking admission to the United States or to adjust status to permanent residence are inadmissible if they are likely at any time to become a public charge.³

Historically, "public charge" has been interpreted to mean a foreign national who is 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 the government's expense. Individuals' reliance on or receipt of non-cash

benefits (e.g., SNAP or food stamps, Medicaid, and housing subsidies) was not previously considered by DHS in determining whether an individual was likely to become a public charge.

Final Rule

Aimed at establishing that foreign nationals seeking to enter and remain in the U.S. are self-sufficient, the final rule redefines the term “public charge” to refer to a foreign national who receives one or more designated public benefits for more than 12 months in the aggregate within any 36-month period.⁴ Receipt of two benefits in one month counts as two months of benefits. The term “public benefits” is defined to include cash benefits for income maintenance (SSI and TANF), SNAP, most forms of Medicaid, Section 8 housing and rental assistance, and certain other forms of subsidized housing. The final rule also addresses USCIS’ authority to permit a foreign national to submit a bond to overcome a public charge finding in the context of an adjustment of status (i.e., permanent residence) application.

Under the final rule, most adjustment of status applicants will be subject to a review of the “totality of circumstances” to determine their likelihood of becoming a public charge at any time in the future. The factors to be considered include an applicant’s age, household size, income, financial liabilities, receipt of certain public benefits, health, education, and skill set. Adjustment of status applicants will also be required to complete a lengthy declaration of self-sufficiency and provide comprehensive, detailed documentary evidence to support their declaration.

The final rule relating to the public charge ground of inadmissibility will require nonimmigrants seeking to change or extend status in the U.S. to disclose whether they have received or are certified to receive certain public benefits on or after October 15, 2019. The final rule renders nonimmigrants ineligible for an extension of stay or a change of status if they have received one or more public benefits for more than 12 months in the aggregate within any 36-month period since obtaining nonimmigrant status, with two public benefits received within one month counted as two months of benefits.

Next Steps

DHS is expected to release more information on the implementation of the final rule in the coming days. Employers and foreign national employees should be aware that new application forms will likely be released soon, and there may be little to no grace period provided to permit use of the current form versions. To the extent possible, every effort should be made to file applications for adjustment of status, change of status, and extension of status before the new form versions take effect.

KPMG NOTE

Our office is tracking these matters closely. We will endeavor to keep readers of GMS *Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 For the full text of the U.S. Supreme Court’s January 27, 2020 order, [click here](#).
- 2 To read the U.S. Citizenship and Immigration Services August 12, 2019 news release, [click here](#). For the full text of the final rule published in the *Federal Register* on August 14, 2019, [click here](#).
- 3 For more information about public charges for the purpose of immigration, [click here](#).
- 4 For prior coverage of the DHS rule, see GMS [Flash Alert 2019-131](#) (August 15, 2019).

Contact us

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