



# GMS Flash Alert

## Immigration Edition

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# United States – New Ruling Narrows Injunctions Blocking Public Charge Rule

On August 12, 2020, the United States Court of Appeals for the Second Circuit stayed the nationwide injunction of the public charge rule granted by the lower court on July 29, 2020, for all states except for Vermont, Connecticut, and New York.<sup>1</sup> (For prior coverage related to the injunctions on the public charge rule see [GMS \*Flash Alert\* 2020-340](#) (August 6, 2020).)

The new ruling from the Court of Appeals allows the U.S. Department of Homeland Security (DHS) to continue to apply the public charge rule in the District of Columbia and all states, except for Vermont, Connecticut, and New York.

The ruling does not affect the court-ordered injunction barring the application of the public charge rule by the U.S. Department of State (DOS), which is covered in a separate lawsuit.<sup>2</sup>

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## WHY THIS MATTERS

Employers filing nonimmigrant and immigrant visa applications with the United States Citizenship and Immigration Services (USCIS) on behalf of their foreign national employees will need to carefully assess whether the public charge rule is applicable in preparing their filings. As a result of the August 12 Court of Appeals ruling, the public charge rule is not to be applied in Vermont, Connecticut, and New York. In these three states, the DHS is to continue to apply the public charge guidance that was in place before the public charge rule effective date of February 24, 2020.<sup>3</sup>

For the District of Columbia and those states determined to be subject to the public charge rule, its application 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.<sup>4</sup> The continued implementation of this rule significantly increases the evidentiary burden on immigrants to establish that they will not become a public charge of the U.S. government. Further, the application of the rule potentially causes processing delays as U.S. immigration officers must review additional supporting material in connection with applications for immigration benefits.

## Further USCIS Guidance Anticipated

At this time, the USCIS has not yet issued instructions on how the agency will apply the public charge rule following the August 12 decision from the U.S. Court of Appeals that allows the rule's implementation across most states and the District of Columbia, but excludes Vermont, Connecticut, and New York. It is anticipated the USCIS soon will publish clarifying guidance on how the agency will modify its application of the public charge rule in light of the August 12 decision.

It is expected that those subject to the public charge rule and not covered by a limited injunction will continue to be required to submit the Form I-944, *Declaration of Self-Sufficiency*, and address questions regarding the receipt of public benefits on Form I-485, *Application to Register Permanent Residence*. As for nonimmigrant benefits, petitioners and applicants subject to the public charge rule will be required to respond to questions relating to public charge when filing Form I-129, *Petition for Nonimmigrant Worker*, or Form I-539/I-539A, *Application to Extend/Change Nonimmigrant Status*.

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### KPMG NOTE

KPMG Law LLP will be carefully monitoring any guidance provided by DHS regarding the application of the public charge rule on pending and future petitions. We will endeavor to keep readers of GMS *Flash Alert* posted on any important developments as and when they occur.

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### FOOTNOTES:

- 1 U.S. Court of Appeals for the Second Circuit Order No. 20-2537 (August 12, 2020) *States of New York, Connecticut, and Vermont v. U.S. Department of Homeland Security, et al.*
- 2 U.S. District Court of Southern District of New York [opinion and order](#) (July 29, 2020) *Make the Road New York, et al. v. Pompeo et al.*
- 3 Immigration and Naturalization Service [Field Guidance on Deportability and Inadmissibility on Public Charge Grounds](#) (May 26, 1999).
- 4 For the full text of the final rule published in the *Federal Register* on August 14, 2019, [click here](#). For more information on the public charge ground of inadmissibility as it applies to USCIS adjudications and visa application adjudications at U.S. consulates and embassies abroad, please visit <https://www.uscis.gov/news/public-charge-fact-sheet> and <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visa-denials.html>.

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## Contact us

For additional information or assistance, please contact your local GMS or People Services professional\* or one of the following professionals with the KPMG International member firm in Canada:



**Chelsea Hsieh**

**Senior Manager, Attorney, U.S. Immigration**

KPMG Law LLP – Tax + Immigration, Canada

Tel. +1 416-943-7874

[chelseahsieh@kpmg.ca](mailto:chelseahsieh@kpmg.ca)



**Beth Nanton**

**Partner/U.S. Immigration, Practice Leader**

KPMG Law LLP – Tax + Immigration, Canada

Tel. +1 604-691-3316

[bnanton@kpmg.ca](mailto:bnanton@kpmg.ca)

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