



Blog

DHS PUBLISHES FINAL RULE REINTERPRETING PUBLIC CHARGE GROUND OF INADMISSIBILITY

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On August 14, 2019, the Department of Homeland Security (DHS) published a Final Rule in the Federal Register, announcing changes to longstanding guidance on the public

charge ground of inadmissibility. The Final Rule will go into effect on October 15, 2019 and will impact any application postmarked on or after that date; it will not impact applications which remain pending on or after the effective date.

The Final Rule modifies the longstanding definition of who is “likely at any time to become a public charge,” a ground of inadmissibility found in section 212(a)(4) of the Immigration and Nationality Act. The Final Rule notes that since 1999, the government’s guidance regarding public charge determinations has indicated that foreign nationals are inadmissible to the U.S. on this ground only if they are “primarily dependent” on the government for subsistence, as demonstrated by either receipt of public cash assistance for income maintenance or institutionalization for long-term care at government expense. The Final Rule modifies this definition to apply the ground of inadmissibility to any foreign national who is “more likely than not” to receive any of these benefits for more than 12 months in the aggregate within any 36-month period.

The Final Rule also expands the list of programs to be considered as indicative of being or becoming a public charge to include five additional non-cash benefits, including: non-emergency Medicaid; Supplemental Nutrition and Assistance Program (SNAP, formerly food stamps); Section 8 Housing Choice Voucher Program; Section 8 Project-Based Rental Assistance; and Public Housing.

If an applicant for an immigration benefit shares a household with U.S. citizens (e.g., children born in the U.S.), the applicant will not be considered a public charge if the U.S. citizen household members access public benefits for which they otherwise qualify.

The Final Rule also directs DHS officials to make a determination as to whether an applicant for an immigration benefit is likely to become a public charge based on five statutory factors, including: the applicant’s age, health, family status, assets/resources/financial status, and education/skills.

Effective October 15, 2019, all applicants for adjustment of status will be required to complete a Form I-944, Declaration of Self-Sufficiency, and submit it to USCIS together with Form I-485. The I-944 Form has not yet been created but should be available at www.uscis.gov/forms on or before October 15. In

9/9/20^r addition, Forms I-129 and I-539 will likely be updated in the coming weeks to include additional questions regarding prior receipt of public benefits.

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It should be noted that the Final Rule generally will not adversely impact those who already hold Lawful Permanent Resident status if they access the five public benefits programs outlined above -- unless they once again become applicants for admission to the U.S., such as by spending over 180 days continuously outside of the U.S. or being found to have abandoned their residency by frequent trips abroad.