

PUBLICATION

New DHS Rule Redefines the Definition of "Public Charge"

August 13, 2019

Yesterday, the Department of Homeland Security (DHS) announced a new final rule that will dramatically expand the number of immigrants that DHS could deem ineligible for green cards and admission to the United States on account of income level and prior use of certain public benefits. The rule will be officially released tomorrow and will take effect for filings made on or after October 7, 2019 as to public benefits received before that date.

The prior law made people who "are likely to become a public charge" inadmissible for temporary status or permanent residence. The new regulation (1) announces USCIS plans to apply this limit more systematically to nonimmigrants who apply for an extension of status or change of status in the U.S., (2) lengthens the list of public benefits considered as part of a public charge analysis, (3) gives immigration officers substantial discretion in assessing whether an applicant is likely to become a public charge in the future, and establishes a process for requiring a bond of at least \$8,100 to overcome public charge inadmissibility.

The rule directs officers to continue applying a "totality of the circumstances" test for whether an applicant is likely to become a public charge in the future, including the applicant's age, health, family status, financial status and assets, education, skills, support pledged by other people, expected period of admission, and immigration status. Under the new rule, a heavily considered factor will be the past receipt for more than an aggregate of 12 months within any 36-month period of one or more of the following expanded list of "covered public benefits":

- Federal, state, local or tribal cash benefits for income maintenance (including Supplemental Security Income or Temporary Assistance to Needy Families);
- The Supplemental Nutrition Assistance Program (SNAP, or food stamps);
- Certain federal housing benefits, including Section 8 Housing Assistance or Project-based Rental Assistance; and
- Medicaid (with some exceptions which include Medicaid received by persons under 21, pregnant women, women up to 60 days after the last day of pregnancy, and persons with emergency medical conditions).

The new rule will not apply to the following persons:

- U.S. citizens, including those related to a foreign national seeking benefits;
- Most lawful permanent residents, including permanent residents who apply for naturalization to U.S. citizenship;
- Members of the armed forces and their family members;
- Certain adoptees; and
- Foreign nationals who are exempt from public charge grounds of inadmissibility, including asylees, refugees, victims of human trafficking, domestic violence and certain enumerated crimes, and Special Immigrant Juveniles.

Foreign nationals in the U.S. should consider the new rule and its potential impact on their immigration status even though the rule has not officially gone into effect. Those persons who are considering filing applications in

the upcoming months may want to consider the benefit of applying prior to the rule's implementation so as to avoid the new public charge analysis.