

USCIS Announces Public Charge Rule Implementation

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02.20.2020

Practice Areas
Business Immigration

On January 30, 2020, the U.S. Citizenship and Immigration Services (USCIS) announced it would be implementing the Inadmissibility on Public Charge Grounds final rule (Final Rule) on February 24, 2020. This implementation follows the U.S. Supreme Court's recent decision to lift the nationwide injunctions issued by various federal judges in October 2019 enjoining the Final Rule from becoming effective.

However, the USCIS has confirmed the Final Rule remains enjoined in the State of Illinois. The Final Rule prescribes how the Department of Homeland Security (DHS) will determine whether an individual is inadmissible to the U.S. based on the individual's likelihood of becoming a future "public charge."

In determining inadmissibility, the USCIS defines "public charge" as an individual who is likely to become "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." The items not subject to public charge consideration are "non-cash benefits and special-purpose cash benefits that are not intended for income maintenance."

Further, the Final Rule confirms the USCIS' authority to issue public charge bonds for Adjustment of Status applications. It also requires individuals seeking a change of status or extension of stay "demonstrate that they have not received public benefits over the designated threshold since obtaining the nonimmigrant status they seek to extend or change."

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Employers seeking to sponsor immigrant and nonimmigrant workers will now be required to answer additional questions on many forms used to apply for immigration benefits, as well as submit accompanying evidence not previously required. If the injunction in Illinois is lifted, the USCIS will provide additional guidance to the public.