

From: U.S. Citizenship and Immigration Services <uscis@public.govdelivery.com>
Sent: Monday, August 12, 2019 12:01 PM
To:
Subject: USCIS: Inadmissibility on Public Charge Grounds - Final Rule, Monday, August 12, 2019

Stakeholder Message

The U.S. Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) today announced a [final rule](#) that clearly defines the long-standing public charge inadmissibility law.

DHS has revised the definition of public charge to better ensure that aliens subject to the public charge inadmissibility ground, found at section 212(a)(4) of the Immigration and Nationality Act (INA), are self-sufficient. By law, in determining whether an alien is inadmissible under this ground, the government must at a minimum consider the alien's age; health; family status; assets, resources, and financial status; and education and skills; and may consider any required affidavit of support.

The final rule defines the term public charge to mean an alien who receives one or more designated public benefits for more than 12 months, in total, within any 36-month period. The rule further defines the term public benefit to include cash benefits for income maintenance, Supplemental Security Income (SSI), Temporary Assistance to Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and subsidized public housing.

This list of public benefits in the final rule is an exhaustive list with respect to non-cash benefits. However, cash benefits for income maintenance may include a variety of general purpose means-tested cash benefits provided by federal, state, local, or tribal benefit granting agencies, and only public benefits specifically listed in the rule will be considered. Public benefits not listed in the rule are not considered in the public charge inadmissibility determination. The rule does not include, for example, consideration of emergency medical assistance, disaster relief, national school lunch programs, foster care and adoption, Head Start, or student or home mortgage loans.

This rule also clarifies that DHS will not consider the receipt of designated public benefits received by an alien who, at the time of receipt, or at the time of filing the application for admission, adjustment of status, extension of stay, or change of status, is enlisted in the U.S. armed forces, or is serving in active duty or in any of the Ready Reserve components of the U.S. armed forces, and will not consider the receipt of public benefits by the spouse and children of such service members. The rule further provides that DHS will not consider public benefits received by children, including adopted children, who will acquire U.S. citizenship under INA 320, 8 U.S.C. 1431.

Similarly, DHS will not consider the Medicaid benefits received: (1) for the treatment of an "emergency medical condition," (2) as services or benefits provided in connection with the Individuals with Disabilities Education Act, (3) as school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law, (4) by aliens under the age of 21, and (5) by pregnant women and by women within the 60-day period beginning on the last day of the pregnancy.

The final rule also establishes the totality of the circumstances standard for determining whether an alien is likely at any time in the future to become a public charge, which includes weighing, at a minimum, the alien's age; health; family status; assets; resources and financial status; education and skills; prospective immigration status; expected period of admission; and sufficient affidavit of support under section 213A of the INA. No single factor alone, including the receipt of public benefits, is outcome determinative: The determination of an alien's likelihood of

becoming a public charge at any time in the future must be based on the totality of the alien's circumstances and by weighing all of the factors that are relevant to the alien's case.

This rule also explains how USCIS will exercise its discretionary authority, in limited circumstances, to offer an alien inadmissible only on the public charge ground the opportunity to post a public charge bond. The final rule sets the minimum bond amount at \$8,100 (adjusted for inflation); the actual bond amount would be dependent on the individual's circumstances.

This rule also makes nonimmigrants in the United States who have received, since obtaining the nonimmigrant status they seek to extend or from which they seek to change, designated public benefits above the designated threshold generally ineligible for extension of stay and change of status.

Importantly, this regulation does not apply to humanitarian-based immigration programs such as refugees, asylees, special immigrant juveniles (SIJs), certain trafficking victims, victims of qualifying criminal activity, or victims of domestic violence.

The final rule applies to applications and petitions postmarked (or, if applicable, submitted electronically) on or after the effective date of the final rule. Applications and petitions pending with USCIS on the effective date of the final rule will be adjudicated under the 1999 Interim Field Guidance. In addition, the final rule contains special provisions for the consideration of public benefits received before the effective date of the final rule: any benefits excluded from consideration under the 1999 Interim Field Guidance (for example, SNAP, Section 8 Housing Vouchers) that are received before the effective date of the final rule will not be considered; any public benefits that would have been considered under the 1999 Interim Field Guidance and are received before the effective date of the final rule will be considered in the totality of the alien's circumstances, but will not be weighted heavily.

In the coming weeks, USCIS will conduct engagement sessions to ensure that the public understands which benefits are included in the rule and which are not.

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Kind regards,

Public Engagement Division
U.S. Citizenship and Immigration Services

