



GMS Flash Alert

Immigration Edition

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United States - Injunctions Granted to Block Public Charge Rules

On July 29, 2020, the United States District Court for the Southern District of New York issued two separate nationwide temporary injunctions related to public charge rules applied by the U.S. Department of Homeland Security (DHS)¹ and the U.S. Department of State (DOS).²

As a result of the temporary injunction against the DHS, U.S. Citizenship and Immigration Services (USCIS) confirmed on July 31, 2020, that any information provided by an applicant or petitioner in relation to the public charge rule will not be considered when adjudicating applications or petitions after July 29, 2020.³ USCIS further confirmed that individuals who file a Form I-485 postmarked after July 29, 2020, will not be required to submit the Form I-944 or address questions regarding the receipt of public benefits on Form I-485. In addition, USCIS advised that petitioners and applicants filing Form I-129 or Form I-539/I-539A postmarked after July 29, 2020, need not complete the questions relating to public charge.

WHY THIS MATTERS

As a result, petitioners and applicants, in certain cases, will not have as much administration and as many questions they need to answer when filing their forms.

The temporary injunction enjoining DOS from applying its 2018 public charge Foreign Affairs Manual (FAM) revisions and its interim final rule related to public charge will positively impact visa applications by limiting the scope of public benefits that may be considered by consular officers.

The injunction also prevents DOS from enforcing the Health Insurance Proclamation, although it had already been blocked in a separate decision of the U.S. Court of Appeals for the Ninth Circuit.⁴

Details of the Injunctions

The first injunction prevents the DHS from enforcing the public charge rule during the COVID-19 outbreak. The U.S. district court held that there is “ample evidence” that the DHS public charge rule “deters immigrants from seeking testing and treatment for COVID-19.” The court further held that the USCIS alert indicating that the public charge rule would not adversely impact foreign nationals who sought treatment for COVID-19 was unclear, thus adding to the “confusion and chaos,” which has resulted in many immigrants forgoing medical care.

The court issued a separate injunction to enjoin the DOS from applying the 2018 revisions to the Foreign Affairs Manual (FAM), the interim final public charge rule, and/or President Trump’s Health Care Proclamation when adjudicating visa applications at U.S. embassies and consulates. The order states that “a geographically limited injunction would be especially unworkable in a case such as this, where consular officers on foreign soil would have to determine how to apply different rules to different applicants.” The district court also found that enforcement of President Trump’s Health Care Proclamation would leave immigrants “underinsured and at greater risk of incurring uncompensated costs that will ultimately fall on and burden local and state governments.”

Background

The public charge ground of inadmissibility has been a part of U.S. immigration law for more than a century. An alien who is likely at any time to become a public charge is generally inadmissible to the United States and ineligible to become a lawful permanent resident. In 1999, the Immigration and Naturalization Service (INS), the precursor to USCIS, defined “public charge” as someone who is “primarily dependent on the government for subsistence” by receiving either public cash assistance or government-funded long-term care.”⁵

USCIS published a final rule amending the regulations related to the public charge ground of inadmissibility on August 14, 2019.⁶ The rule was to take effect on October 15, 2019, but several nationwide injunctions halted its implementation. The U.S. Supreme Court stayed the last remaining injunction, on February 21, 2020, allowing DHS to begin implementing the new final public charge rule without restriction on February 24, 2020. The new final rule applied to individuals applying for nonimmigrant visa status or permanent residence from within the U.S., as well as immigrants who left the country for 180 days or more, and subsequently applied to re-enter. The final rule implemented by USCIS on February 24, 2020, generally required the 18-page Form I-944, *Declaration of Self-Sufficiency*, to be filed with an I-485, *Application to Register Permanent Residence or Adjust Status*. In addition, USCIS published a number of revised forms consistent with the final rule on the public charge ground of inadmissibility, including Form I-129, *Petition for Nonimmigrant Worker*, and Form I-539, *Application to Extend/Change Status*. (See [GMS Flash Alert 2019-131](#) (August 15, 2019) for in-depth coverage of USCIS’ final public charge rule.)

DOS revised the FAM to instruct consular officers to consider a wider range of public benefits when determining whether visa applicants are inadmissible on public charge grounds on January 3, 2018.⁷ DOS issued an interim final rule on October 11, 2019, to align with DHS’ final rule relating to public charge⁸. The interim final rule was to take effect on October 15, 2019, however, DOS ultimately decided not to implement the rule until the use of a new form for information collection, DS-5540, was approved by Office of Management and Budget (OMB). Form DS-5540 went into use after it was approved by the OMB on February 20, 2020.⁹ DOS published revisions to the FAM related to public charge inadmissibility on February 21, 2020. The DOS interim new rule was effective as of February 24, 2020, the same date on which the DHS final public charge rule was implemented. (For related coverage of OMB’s review of DHS’ public charge questionnaire, see [GMS Flash Alert 2020-032](#), February 20, 2020.)

The DHS final rule related to public charge, along with the DOS interim final public charge rule and guidance, significantly increased the burden on foreign nationals to establish that they will not become a public charge of the U.S. government. The injunctions granted July 29, 2020, by the U.S. district court are the result of legal challenges to the public charge rules launched by several states, the City of New York, and various non-profit organizations.

KPMG NOTE

The federal government is expected to appeal the district court's orders. In the meantime, KPMG Law LLP will be carefully monitoring any guidance provided by DHS and DOS regarding the adjudication of pending and future petitions and applications. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 U.S. District Court of Southern District of New York [decision and order](#) (July 29, 2020) *States v. Department of Homeland Security*.
- 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 USCIS [Injunction of the Inadmissibility on Public Charge Grounds Final Rule](#) (July 31, 2020).
- 4 For prior coverage of the Ninth Circuit's ruling, see *GMS Flash Alert 2020-221* (May 7, 2020).
- 5 Immigration and Naturalization Service [Field Guidance on Deportability and Inadmissibility on Public Charge Grounds 1999 Public Charge Guidance](#) (May 26, 1999).
- 6 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>.
- 7 Please see [9 FAM 302.8](#).
- 8 For the full text of the interim final rule published in the *Federal Register* on October 11, 2019, DOS' Interim Final Public Charge Rule, [click here](#).
- 9 Form DS-5540, [Public Charge Questionnaire](#).

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Contact us

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