



GMS Flash Alert

Immigration Edition

2021-087 | March 17, 2021

United States – DHS Public Charge Rule Rescinded

On March 11, 2021, President Biden formally rescinded the public charge rule of the U.S. Department of Homeland Security (DHS).¹ The rescission comes after the U.S. Supreme Court dismissed a case related to the public charge rule on March 9, 2021. The dismissal was based on DHS' assertion that continuing to defend the rule was "neither in the public interest nor an efficient use of limited government resources."²

U.S. Citizenship and Immigration Services (USCIS) confirmed that, as of March 9, 2021, foreign nationals no longer need to provide information solely required by the DHS public charge rule.³ Specifically, individuals applying to adjust status to permanent resident are no longer required to file Form I-944, *Declaration of Self-Sufficiency*, with the corresponding documentation. Also, nonimmigrants applying to change or extend status are no longer required to answer questions about receipt of public benefits on Forms I-129, I-539, and I-539A. USCIS will not consider any information solely required by the public charge rule when adjudicating applications and petitions pending as of March 9, 2021.

The Department of Justice filed a joint motion to dismiss the petition for certiorari in the Supreme Court, as well as joint motions to dismiss ongoing appeals in various circuit courts. Several states have attempted to reinstate the dismissed cases, with the objective of upholding and reinstating the public charge rule. If they succeed, USCIS may be required to implement the public charge rule again.

WHY THIS MATTERS

Rescission of DHS' public charge rule means that the 1999 interim field guidance concerning public charge is now in effect. Under that 1999 guidance, "public charge" is defined as a foreign national who has become or is likely to become primarily dependent on the U.S. government, either by receipt of cash assistance for income maintenance or by institutionalization for long-term care. Receipt of Medicaid, non-cash benefits aside from long-term institutionalization, or Supplemental Nutrition Assistance Program (SNAP) benefits are not considered under the 1999 interim field guidance.

Importantly, the 1999 interim field guidance does not require a public charge analysis to be applied to nonimmigrant applications to change or extend status.

Background

In November 2, 2020, the U.S. District Court for the Northern District of Illinois's decision in *Cook County et al. v Wolf et al.*, No. 19 C 6334 (N.D. Ill. 2020) struck down the DHS public charge rule. The DHS appealed the ruling in *Cook County et al. v Wolf et al.* to the Seventh Circuit Court of Appeals on an urgent basis and requested that the lower court decision be stayed while the full appeal is heard. The Appeals Court granted the DHS' request on November 4, 2020, allowing the USCIS to continue implementing the public charge rule.

(For further details of the earlier litigation related to the DHS public charge rule, see [GMS Flash Alert: 2020-451](#), November 5, 2020).⁴

The recent decision by the DHS to discontinue defending its public charge rule renders the earlier decision by U.S. District Court in Illinois final.

KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

1 See *Federal Register*, "[Inadmissibility on Public Charge Grounds: Implementation of Vacatur](#)." For news coverage, see G. Sands, "Biden administration takes final step to end Trump-era 'public charge' rule," *CNN* (online), March 11, 2021 at: <https://www.cnn.com/2021/03/11/politics/biden-admin-takes-final-step-to-end-trump-era-public-charge-rule/index.html>. (Note that this is a 3rd party (non-governmental, non-KPMG) website. Providing this link does not represent an endorsement of this website by KPMG.)

2 [DHS Secretary Statement on the 2019 Public Charge Rule](#).

3 See USCIS website on Green Card Process and Procedures, [Public Charge](#).

4 For our prior coverage of the public charge rule, read the following issues of *GMS Flash Alert*: [2020-411](#) (September 24, 2020), [2020-355](#) (August 14, 2020), and [2020-340](#) (August 6, 2020).

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