Factors Government Will Consider under New Public Charge Rule

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On the same day the Public Charge Rule went into effect (February 24, 2020), immigrant advocates held a teach-in at Boston City Hall to try to lessen the uncertainty and fear that has been spreading through immigrant communities.

The Administration has stated that the Public Charge “[R]ule will protect hardworking American taxpayers, safeguard welfare programs for truly needy Americans, reduce the federal deficit, and re-establish the fundamental legal principle that newcomers to our society should be financially self-sufficient and not dependent on the largess of United States taxpayers.” However, immigration advocates view the rule as “penalizing poverty” and taking the chance to become self-sufficient away from immigrants, a group of individuals who historically has been an important part of our country and our economy.

Previously, this rule primarily affected those who accepted cash welfare benefits. However, the new rule makes admission to the U.S. more difficult for low-income immigrants and non-immigrants who use other, non-cash welfare benefits. The Department of Homeland Security (DHS) has said that the public charge rule is meant to determine whether a person is likely to use of certain government benefits in the future. To make that determination, officers will review the totality of the
circumstances, including an applicant’s income, age, health, family status, assets, credit scores, liabilities, education, and skills (including English language), visa classification sought, and receipt of public benefits. Some factors serve as “negative” factors, others as “positive” factors.

Receipt of certain public benefits for more than 12 months within any 36-month period (following February 24, 2020) definitely is a negative factor (unless the individual was in the military at the time of receipt or is a U.S. citizen child of an applicant). These public benefits include:

- Supplementary Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Federal, state, or local cash benefit programs for income maintenance
- Supplemental Nutrition Assistance Program (SNAP, a.k.a., “food stamps”)
- Housing Choice Voucher Program (Section 8)
- Project-Based Rental Assistance
- Medicaid (with certain exceptions, including for emergency medical conditions, for aliens under 21, or women during pregnancy)
- Subsidized Public Housing (Section 9)

Other heavily weighted negative factors include:

- Applicant is not a full-time student and, despite work authorization, has no current employment, recent employment history, or reasonable prospect of employment;
- Applicant has a diagnosed medical condition that likely will require extensive medical treatment or institutionalization and has no financial resources to pay for this; or
- Applicant previously was found inadmissible on public charge grounds.

Heavily weighted positive factors include:

- Household income, assets, resources, or support from a sponsor of at least 250 percent of the Federal Poverty Guidelines ($65,500 for a family of four);
- History of employment in the U.S. with an annual income of at least 250 percent of the Federal Poverty Guidelines; or
- Applicant has private health insurance for use in the U.S. that will cover the period the applicant is expected to remain in the U.S.

If subject to the public charge test, applicants for adjustment of status or others applying for immigrant or nonimmigrant visas may need to provide a significant amount of financial data on either Form I-944, Declaration of Self Sufficiency,
or Form DS-5540, Public Charge Questionnaire.

These groups of individuals will not be subject to the public charge test:

- S. citizens
- Most Green Card holders (unless they have been outside of the U.S. for at least six months)
- Applicants for Temporary Protected Status (TPS), asylee or refugee status, special immigrant juvenile status, or U or T visas.

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