

Public Charge and International Students and Scholars

Paul Herzog, Attorney-at-Law
Email: prherzog@earthlink.net
Tel: (323)244-9417

Public Charge: The Law

“Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible.”

INA 212(a)(4)(A)

Public Charge: the Old Rule

Historically, the Department of State and Immigration Service Interpreted this to mean an alien who was “likely to become **primarily** dependent on the government for subsistence as demonstrated by **either** (1) receipt of public cash assistance for income maintenance or (2) institutionalization for long-term care at government expense

Public Charge: the New Rule (Effective 2/24/2020)

“A person is a public charge if it is more likely than not at any time in the future that the person will receive one or more public benefits for more than twelve months in any 36 month period”

Who Does this New Rule Apply To?

- (1) Applicants for Adjustment of Status or Admission to the United States
- (2) Applications for Change of Status or Extension of Status (such as individuals applying for H, F or J visas)

NOTE: Asylees and Refugees are not covered by this rule

Factors to be Weighed in a Public Charge Analysis

- Age
- Education/Skills
- Financial Resources and Status
- Income
- Period of Admission
- **Receipt, on or after February 24, 2020, of one or more public benefits for more than 12 months, in total, within any 36-month period**

What Benefits are Counted?

- Federal/State/Local/Tribal Cash Assistance for Income Maintenance such as SSI or TANF
- SNAP (“Food Stamps”)
- Section 8 Housing
- Federally Funded Medicaid (with exceptions)

What Benefits are **NOT** Counted?

- Emergency Medicaid
- Benefits received by someone other than the alien (eg. US citizen child)*
- Covid-19 preventative and diagnostic treatment
- Pregnancy related benefits
- Benefits received by aliens under 21 years of age
- Head Start
- Unemployment Insurance
- Scholarships

*However, though receipt by child doesn't count, overall lack of income necessitating benefit would count!

When Does the Public Charge Analysis Happen?

- When a person applies for adjustment of status (filing of Form I-485)
- When a person applies for a visa or admission to the US
- When a person applies to change nonimmigrant status (filing form I-129 or I-539)

Resources

- www.uscis.gov/forms in particular instructions for forms I-485, I-129, I-539 and I-944
- <https://www.nafsa.org/regulatory-information/final-rules-public-charge-determinations>
- <https://cliniclegal.org/resources/ground-inadmissibility-and-deportability/public-charge/public-charge-final-rule-faqs>