



Tip of the Month September 2019

UPDATE: Understanding the Proposed Rule Change for Public Charge: “What do I tell my client?”¹

Submitted by: VLN’s Immigrant Legal Services Program

The Immigration and Nationality Act (INA) determines who can enter the United States (“admissibility”) and in what capacity. Under INA § 212(a)(4), unless they are exempt, a person is inadmissible to the United States if at the time of application for admission or adjustment of status the person is “likely at any time to become a public charge.” Section 8 of the Code of Federal Regulations (CFR) interprets the INA and the public charge provision. On August 14, 2019, the Department of Homeland Security issued final regulations that change how “likelihood to become a public charge” is determined. The new rule, if not enjoined by the courts, will go into effect on October 15, 2019 and apply to all applications submitted on or after that date.

A public charge test is applied when a person:

- Applies for admission the U.S. through consular processing abroad;
- Applies to adjust status to become a Lawful Permanent Resident (LPR);
- Who is an LPR/green card holder seeks admission to the United States after an absence of more than 180 consecutive days;
- Who is a nonimmigrant seeks to extend or change their non-immigrant status while in the United States (**Note:** a different public charge test is applied to nonimmigrants).

Overall, the change to public charge determinations disproportionately affects family-based intending immigrants with low-to-moderate incomes and from poorer nations. The rule change has caused much confusion and a harmful chilling effect within refugee and immigrant communities and service providers. Out of fear, families are not accepting benefits for which they are eligible and need.

The new rule does two main things:

1. Requires applicants for certain types of immigrant statuses to provide extensive evidence that they are not likely to enroll in certain public assistance programs in the future based on factors such as income and financial status, age, health, household size, and education and skills.²
2. Expands the list of public programs that may result in denial based on public charge if an applicant receives them after the rule goes into effect.³

¹ In a December 2018 Tip of the Month, VLN discussed the proposed “public charge” regulation. This is an update. For more background information, see the VLN December 2018 Tip of the Month at <https://www.vlnmn.org/wp-content/uploads/2018/12/Tip-of-the-Month-December-2018-Public-Charge.pdf>. This update is not meant to be legal advice. Each immigration situation is different and persons should seek individual advice for their particular situation.

² *How to Talk About Public Charge*, Catholic Legal Immigration Network, Inc. (CLINIC) (August 2019).

³ *Ibid.* In Minnesota the public benefits considered as part of the public charge test are: Cash benefits (SSI, MFIP, General Assistance), SNAP/Foodstamps/EBT, Medicaid (with exceptions for minor and pregnant women), and Federal public housing/Section 8.

Even so, (1) there are many public programs not included in the public charge list of benefits and they will not be considered under the rule;⁴ (2) there are categories of persons who are not subject to the ground of inadmissibility or a special rule applies;⁵ and (3) public assistance received by an applicant's U.S. citizen family members will not be considered in the applicant's public charge analysis.²

Immigrants who have pending immigration applications, are sponsoring family overseas to immigrate, or those who are considering accepting or stopping benefits should seek advice from a qualified immigration attorney or accredited representative before making decisions about their immigration case or receipt of benefits.

We can help to dispel confusion and fear by knowing what to tell and where to refer our clients. Good local resources that both practitioners and clients may access include:

(1) For free legal advice about public benefits or public charge:

- “ Mid-Minnesota Legal Aid — 1-800-292-4150 (Statewide)
- “ Southern Minnesota Regional Legal Services — 1-888-575-2954
(for persons living in Southern Minnesota counties only)

(2) For free immigration questions and help:

- “ Volunteer Lawyers Network — 612-752-6677
- “ Immigrant Law Center of MN – 1-800-223-1368
- “ Mid-Minnesota Legal Aid — 612-332-1441
- “ Southern Minnesota Regional Legal Services — 1-888-575-2954
(for persons living in Southern Minnesota counties only)

⁴ In Minnesota, such programs not considered part of the public charge consideration include: MinnesotaCare; Medicare; Emergency Medical Assistance (EMA); Medicaid for children under 21, pregnant women; Energy Assistance; Unemployment; Workers' Compensation; Veterans benefits; Adoption; Foster care; School breakfasts/lunches; EITC; Child care; Head Start; Immunizations; Public health testing/treatment for communicable diseases.

⁵ The rule, in general, does not apply to:

- United States citizens (USC);
- Lawful Permanent Residents (LPRs), including those applying to naturalize as USCs, those renewing their LPR card, and those with conditional residency except for LPRs and conditional residents who will seek, are seeking or have sought admission after having “been absent from the U.S. for a continuous period in excess of 180 days.”;
- Applicants for and those applying to adjust status as a refugee, Amerasian, asylee, VAWA self-petitioner, or Special Immigrant Juvenile;
- Applicants for and those applying to adjust status through the U and T Visa process (as long as the visa has not expired);
- Cubans applying to adjust status under the Cuban Adjustment Act and Lautenberg parolees applying to adjust status.
- Applicants for benefits under NACARA.
- Applicants for benefits under the Haitian Relief and Immigrant Fairness Act (HRIFA).
- Applicants for withholding of removal or relief under the Convention Against Torture.
- Applicants for initial or re-registration of Temporary Protected Status (TPS), unless the person applies for admission under a category subject to public charge.
- Afghan and Iraqi interpreters and translators who are applying for special immigrant visas (SIV).
- Applicants for “registry”.
- Applicants for initial (currently not available) or renewal of Deferred Action for Childhood Arrivals (DACA), unless the person applies for admission under a category subject to public charge.