

Clarifying the "Public Charge" Policy

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A new federal policy instructs consular officers in the US Department of State to deny immigration benefits to individuals applying for permanent residence at US consular offices if, in the officer's judgment, the intending immigrant is likely to use means-tested public benefits in the US once he or she becomes a permanent resident. In this newsletter, we break down the new policy and what they might mean for you and your family.

Please note that this policy change applies at present ONLY to those immigrants seeking legal status at US consular offices overseas based on family petitions. Regulations for intending immigrants who will apply for their residence in the US have not yet been published. However, draft regulations for US Citizenship and Immigration Services (USCIS) were leaked earlier this year, and they are likely to be just as restrictive as the current guidelines for consular officers.

Also note that the new standard does NOT apply to those who are already lawful permanent residents and who are seeking to apply for citizenship, nor does it apply to those applying for their legal residence based on a U visa, as an asylee or refugee, or as a battered spouse.

✧ **What is a "public charge"?**

The term "public charge" is used to describe a person who depends primarily on the government for their basic needs.

✧ **How does the government decide that someone is likely to become a public charge?**

For decades, immigration officials looked at multiple factors, including an intending immigrant's age, health, family size, income and financial resources, education, employment and skills to assess whether that person is likely to use public benefits in the U.S. It was considered a negative factor if the applicant, their sponsor, or members of their household (including US citizen children) currently receive public assistance, or if they have received public assistance in the past.

In family visa petition cases, applicants proved that they weren't likely to become a public charge by filing an affidavit of support, showing that their petitioner or a cosponsor had sufficient income or assets to support them at or above the poverty level. In almost all cases, USCIS did not look beyond a properly-executed affidavit of support to determine public charge inadmissibility.

That has now changed with the new Department of State guidance. The Department of State will look at a variety of factors, only one of which is the affidavit of support.

✧ **What counts as public assistance?**

Previously, the only benefits that counted as negative factors for an immigration case were cash assistance programs, such as Supplemental Security Income (SSI) and Temporary Assistance for Needy Families (TANF), and long-term institutionalization that the government pays for, like Medicaid nursing homes or mental health institutions.

Under the new policy, many non-cash public benefits count as public assistance. These include programs like Medicaid (often known as Molina Healthcare and Apple Health in Washington State), food stamps, WIC, Section 8 housing vouchers, utility assistance, and claiming the earned income tax credit on your federal taxes.

✧ **When does this policy take effect?**

These changes have already taken effect for people applying for admission to the U.S. from abroad, with exceptions for refugees and certain other groups. So, for example, if you are an immigrant who must have a visa interview at the U.S. consulate or embassy in your home country, you should discuss this issue with your attorney. The policy has NOT taken effect for people adjusting their status to permanent residence within the US.

✧ **I've received public benefits in the past. Does that mean my application will be rejected?**

While it is true that current or past receipt of public benefits is considered a negative factor in the for an applicant, immigration officials must look at the applicant's full situation. A negative factor like past receipt of public benefits may be outweighed by positive factors, such as stable work history, education, or special skills. Every case is different, and there are many different ways to prove that you will not become a public charge, depending on your individual circumstances.

✧ **My family receives public benefits. Should I cancel them now?**

No. Consult an immigration attorney before cancelling any assistance that you or your family members need. The new policy may not apply in your case.

✧ **If I or my family members have received public benefits, can I still apply for citizenship?**

Yes. The public charge policy applies only to people applying for lawful permanent residence (a green card) and those seeking entry to the U.S, with some exceptions. It does not apply to green card holders applying for citizenship.

✧ **Will this new policy affect my ability to renew DACA?**

No, the public charge policy does not apply to DACA applicants. It applies to family-based consular processing for permanent residence.

Immigration law and policy is constantly changing, and no two cases are the same. We strongly recommend that you consult with an immigration attorney to get the most up-to-date, accurate advice possible.

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