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February 16, 2020

CLIENT ADVISORY: PUBLIC CHARGE PROCESS CHANGES

New public charge rules and forms come into effect February 24, 2020.

What is a "Public Charge"?

A "public charge" means an individual who is likely to become primarily dependent on the government for subsistence after obtaining immigration status in the United States. Individuals applying for immigration benefits must prove that they are not "likely at any time to become a public charge."¹

United States immigration laws have contained a version of this rule for over 100 years. In the past, individuals have met this requirement by submitting an affidavit of support from their petitioner/sponsor showing that their petitioner/sponsor has adequate income or assets to financially support them, as well as any family members who are immigrating with them or soon afterward.

What is the new rule?

The United States Citizenship and Immigration Services ("USCIS") will implement a new public charge final rule starting on February 24, 2020. The new rule requires the adjudicating officer to weigh individual factors *in addition to* the submission of any affidavit of support and increases the document production burden for individuals seeking immigration benefits in certain categories. The new individual factors are:

- age
- health
- family status
- assets
- resources
- financial status
- education and skills

Information about these factors will be collected on a new form, I-944, which is required to be submitted with certain applications for adjustment of status, extension of stay, and change of status postmarked on or after February 24, 2020. Adjudicating officers will then weigh all positive and negative factors and consider the totality of the circumstances when making a determination about the public charge inadmissibility ground.

¹ Section 212(a)(4) of the Immigration and Nationality Act.

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Is the rule different if I am applying for immigration benefits overseas?

In January 2018, the United States Department of State ("DOS") implemented new public charge guidelines for individuals applying for immigration benefits overseas at a U.S. Embassy or Consulate. The guidelines instruct consular officers to consider a wider range of factors, such as those listed above, when determining whether the applicant and any derivative family members are likely to become a public charge.

On October 15, 2019, DOS issued an interim final rule seeking to align its public charge standards with those of USCIS. Additionally, DOS is seeking to implement a form DS-5540, Public Charge Questionnaire, to obtain similar information collected by USCIS on the new I-944 form. When the DS-5540 form is approved for use, individuals applying for certain immigration benefits will be required to submit this form along with other requisite forms and documentation as part of the visa application process which takes place overseas.

How can an experienced immigration attorney make a difference in my case?

The new public charge rules, guidelines, and forms require the cumbersome collection of key information. Experienced immigration attorneys know they must improve their financial literacy skills so that they are both competent and diligent when gathering and analyzing your financial information to provide proper guidance.

At Boxwala Zuzindlak PLLC, our experienced immigration attorneys promise to:

- Communicate how the public charge rule applies to our clients,
- Set clear expectations of the costs and work necessary to meet the new requirements,
- Strategize a plan to ensure optimal presentation of our clients' positive factors, and
- Establish a process to collect information and minimize delays.

Contact Information

If you have questions about the content of this notice, please contact the attorney of record for your case. If someone you know needs assistance with an immigration matter, our general contact information for our Houston and Detroit offices is:

Telephone (855) 428-3762

Email contact@bzlawusa.com.