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Key Family and Humanitarian Immigration Updates

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Key Family and Related Humanitarian Immigration Updates

2021

Trump Public Charge Rule is Out

After a series of legal challenges, USCIS announced on March 15, 2021, that it was no longer applying the 2019 public charge rule promulgated under the Trump administration. The Trump public charge regulations, which took effect in February 2020, redefined the term “public charge” and significantly expanded the criteria for determining whether applicants were eligible for lawful permanent residency based on past or potential use of public benefits. Additionally, these regulations created evidentiary standards that made it difficult for low-to-moderate income families to immigrate. New adverse factors for consideration included applicants with poor health conditions, advanced age, limited English skills, minimal education or training, and low credit scores, as well as applicants who used certain noncash benefits such as SNAP, nonemergency Medicaid, and housing assistance. The new rules also mandated the filing of an 18-page form, Form I-944 Declaration of Self-Sufficiency, which required in-depth information and documentation about attributes that render the applicant financially solvent or employable.

After the announcement, USCIS published a final rule removing the 2019 public charge regulations from the Federal Register and discontinuing Form I-944 effective immediately. Applicants for adjustment of status, or change/extension of status, no longer are required to provide information or documentation related to the 2019 rule or Form I-944. USCIS will not consider such information or evidence that has already been provided when adjudicating the application. An applicant does not have to produce information or documents in response to an RFE or NOID that relate to the 2019 public charge rule for responses due after March 9, 2021. But the applicant must respond to other evidentiary requests unrelated to the Trump regulations or consistent with prior public charge policies.

USCIS has reverted to its original public charge guidance from 1999, which the agency will apply on all applications subject to the public charge ground of inadmissibility. USCIS will continue to consider the minimum factors described in the public charge statute, such as the applicant’s age, skills, education, health, and income under a “totality of circumstances” test. But it will also rely on the 1999 Interim Field Guidance. Under this guidance, a person is likely to become a public charge if he or she is “primarily dependent on the government for subsistence, as demonstrated by either (i) the receipt of public cash assistance for income maintenance or (ii) institutionalization for long-term care at government expense.” The only public benefits considered are “cash assistance for income maintenance” and “institutionalization for long-term care at government expense.” Unlike the Trump public charge rule, food and nutritional programs like SNAP, public housing programs, and Medicaid (except for long-term care) are excluded from consideration.

Similarly, the Department of State has updated its guidance to consular officers instructing them to follow the public charge standards in place prior to the 2018 FAM guidance and 2019 public charge rules. A preliminary injunction on these Trump-era regulations remains in effect as it relates to consular processing.

Covid-Related Updates for Family-Based Cases

- **Telephonic Appearances of Counsel for USCIS Interviews**

USCIS continues to allow attorneys to appear in person or by telephone at field office appointments. The client should be prepared to explain that the attorney will be appearing telephonically and provide both a telephone number and a copy of the attorney's Form G-28. See <https://www.uscis.gov/about-us/uscis-response-to-covid-19>.

- **Extension of Time to Respond to RFEs, NOIDs, USCIS Denials**

Since March 2020, USCIS has granted an automatic extension of time in which an applicant has to respond to a Request for Evidence or Notice of Intent to Deny (or Rescind or Revoke) or to file an I-290B or N-336 Appeal. For any RFE or NOID/NOIR issued by USCIS between March 1, 2020 and January 15, 2022, the applicant is provided an additional 60 calendar days from the original due date in which to submit a response. For any decision issued by USCIS between March 1, 2020 and January 15, 2022, the appeal form must be received within 60 days of the decision.

- **Covid-19 Vaccinations for AOS, IV, K Visa Applicants**

Effective October 1, 2021, USCIS announced that adjustment of status applicants subject to the medical examination requirement must be fully vaccinated against COVID-19 before a Form I-693 examination record can be completed. Pursuant to CDC guidance, this update requires applicants to provide evidence of vaccination to the civil surgeon or complete a series of COVID-19 vaccine series depending on the type of the vaccine.

Similarly, the State Department announced that, effective October 1, 2021, all immigrant visa applicants, K visa applicants, and applicants who are referred to the panel physicians must provide proof of full COVID-19 vaccination or receive a full COVID-19 vaccination series before a visa can be issued.

Blanket waivers of the COVID-19 vaccine are applied where vaccination is:

- Not appropriate for the age
- Not routinely available
- Contraindicated due to a medical reason
- Limited in supply and would cause significant delay for the applicant

A person may apply for a Form I-601 waiver of the COVID-19 vaccination requirement based on religious beliefs or moral convictions. See USCIS Policy Manual, Volume 9, Part D, Chapter 3 at Section E, available at: <https://www.uscis.gov/policy-manual/volume-9-part-d-chapter-3>.

Refusal or partial refusal of the vaccination requirement without a valid reason will result in a Class A designation, rendering the applicant inadmissible to the United States.

- **Rescission of Covid-Related Travel Bans**

On October 25, 2021, the White House announced that the prior country-specific Covid-related travel bans were revoked. Instead, beginning November 8, 2021, all non-immigrants entering the U.S. must provide proof they are fully vaccinated against COVID-19. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/>.

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