

Clarifying the 2022 Public Charge Final Rule

The U.S. Department of Homeland Security (DHS) has issued a final rule, to be published in the Federal Register, that provides clarity and consistency for noncitizens on how DHS will administer the public charge ground of inadmissibility. The rule restores the historical understanding of a ‘public charge’ that had been in place for decades, until the prior Administration began to consider supplemental public health benefits such as Medicaid and nutritional assistance as part of the public charge inadmissibility determination. The rule announced today speaks to the Biden Administration’s commitment to restoring faith in our legal immigration system.

A noncitizen who is deemed likely to become a ‘public charge,’ meaning that they are likely to become primarily dependent on the government for subsistence, can be denied admission or lawful permanent residence (known colloquially as a green card). Prior to 2019, almost all non-cash government benefits such as Medicaid or nutrition assistance were excluded from consideration. The 2019 rule, which was ultimately vacated and is no longer in effect, resulted in a drop in enrollments in such programs among individuals who are not subject to the public charge ground of inadmissibility, such as U.S. citizen children in mixed-status households. The publication of this rule in the Federal Register avoids these effects by formally codifying the historical understanding of the term.

With this rule, DHS seeks to implement the public charge ground of inadmissibility in a way that:



Provides certainty for the regulated public;



Does not require the completion of new and burdensome forms and supporting documentation;



Is consistent with congressional direction;



Does not establish complicated and confusing standards;



Is clear and comprehensible for officers and for noncitizens and their families;



Does not apply to nonimmigrant applications and petitions for extension of stay and change of status; and



Leads to fair and consistent adjudications to reduce the risk of treating similarly situated individuals unequally;



Does not disregard the importance of avoiding “chilling effects” – that is, discouraging an individual’s participation in public benefit programs, based on fear of negative immigration consequences, even when that individual is not subject to the rule in the first place.



Removes undue barriers on applicants; and



Avoids discouraging the use of public benefits by those who are not subject to the public charge ground.



**U.S. Citizenship
and Immigration
Services**