



Fact Sheet

October 20, 2009

Public Charge

Introduction

Public charge has been part of U.S. immigration law for more than 100 years as a ground of inadmissibility and deportation. An individual who is likely at any time to become a public charge is inadmissible to the United States and ineligible to become a legal permanent resident. However, receiving public benefits does not automatically make an individual a public charge. This fact sheet seeks to inform non-citizens about public charge determinations and help them to make informed choices about whether to apply for certain public benefits.

Background

Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to that of an individual lawfully admitted for permanent residence (green card) is inadmissible if the individual, "at the time of application for admission or adjustment of status, is likely at any time to become a public charge." If an individual is inadmissible, admission to the United States or adjustment of status is not granted.

Immigration and welfare laws have generated some concern about whether a non-citizen may face adverse immigration consequences for having received Federal, state, or local public benefits. Some non-citizens and their families are eligible for public benefits – including disaster relief, treatment of communicable diseases, immunizations, and children's nutrition and health care programs – without being found to be a public charge.

Definition of Public Charge

For purposes of determining inadmissibility, agency guidance has, since 1999, defined "public charge" to mean an individual who is likely to become "primarily dependent on the government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance, or institutionalization for long-term care at government expense." See "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 FR 28689 (May 26, 1999). In determining whether an alien meets this definition for public charge inadmissibility, a number of factors must be considered, including age, health, family status, assets, resources, financial status, education, and skills. No single factor - other than the lack of an affidavit of support, if required - will determine whether an individual is a public charge.

Benefits Subject to Public Charge Consideration

The agency guidance specifies that cash assistance for income maintenance includes Supplemental Security Income (SSI), cash assistance from the Temporary Assistance for Needy Families (TANF) program and State or local cash assistance programs for income maintenance, often called “General Assistance” programs. Acceptance of these forms of public cash assistance could make a non-citizen inadmissible as a public charge, if all other criteria are met. However, the mere receipt of these benefits does not automatically make an individual inadmissible, ineligible to adjust status to lawful permanent resident, or deportable on public charge grounds. *See* “Field Guidance on Deportability and Inadmissibility on Public Charge Grounds,” 64 FR 28689 (May 26, 1999). Each determination is made on a case-by-case basis in the context of the totality of the circumstances.

In addition, public assistance, including Medicaid, that is used to support aliens who reside in an institution for long-term care – such as a nursing home or mental health institution – may also be considered as part of the public charge analysis of the totality of the circumstances. Short-term institutionalization for rehabilitation is not subject to public charge consideration.

Benefits Not Subject to Public Charge Consideration

Under the agency guidance, non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include:

- Medicaid and other health insurance and health services (including public assistance for immunizations and for testing and treatment of symptoms of communicable diseases, use of health clinics, short-term rehabilitation services, prenatal care, and emergency medical services) other than support for long-term institutional care
- Children's Health Insurance Program (CHIP)
- Nutrition programs, including Food Stamps, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the National School Lunch and School Breakfast Program, and other supplementary and emergency food assistance programs
- Housing benefits
- Child care services
- Energy assistance, such as the Low Income Home Energy Assistance Program (LIHEAP)
- Emergency disaster relief
- Foster care and adoption assistance
- Educational assistance (such as attending public school), including benefits under the Head Start Act and aid for elementary, secondary, or higher education
- Job training programs
- In-kind, community-based programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter)
- Non-cash benefits under TANF such as subsidized child care or transit subsidies
- Cash payments that have been earned, such as Title II Social Security benefits, government pensions, and veterans' benefits, among other forms of earned benefits, do not support a public charge determination
- Unemployment compensation is also not considered for public charge purposes

Some of the above programs may provide cash benefits, such as energy assistance, transportation or child care benefits provided under TANF or the Child Care Development Block Grant (CCDBG), and one-time emergency payments under TANF. Since the purpose of such benefits is not for income maintenance, but rather to avoid the need for on-going cash assistance for income maintenance, they are not subject to public charge consideration.